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ABSTRACT

This synthesis of current attitudes on academic freedom as defined by lower court and Supreme Court cases describes the (1) framework in which academic freedom operates, (2) powers and limitations of state legislatures and school officials in defining the curriculum and setting policy, (3) rights and limitations of teachers in making curricular and course decisions, (4) summaries of recent court decisions related to academic freedom, and (5) issues that educational policy makers should address. The framework described in the first section contends that a teacher may use methods, symbols, or materials that are relevant to the subject matter being taught, not in violation of valid laws, compatible with current standards of decency, reasonable for student's level of maturity, intended for legitimate educational purpose, and not likely to result in a substantial disruption of school activities. Sections outlining specific powers and limitations of state legislators, school officials, and teachers are followed by summaries describing both Supreme Court (e.g., "Tinker versus Des Moines School District" and "Board of Education, Island Trees Free District Number 26 versus Pico") and lower court cases in which academic freedom was an issue. Four recommendations designed to help policy makers at all educational levels deal with issues concerning academic freedom are followed by a list of related resources published between 1980 and 1984. (LH)

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ACADEMIC FREEDOM IN THE PUBLIC SCHOOLS

ERIC Digest No. 1

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Kay K. Cook

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ACADEMIC FREEDOM IN THE PUBLIC SCHOOLS

An open classroom climate in which both teachers and students feel free to voice and exchange ideas and opinions is vital to the education of an informed citizenry. The skills involved in critical thinking—problem solving and decision making—can best be developed in an atmosphere that encourages a discussion in which "the essence of truth is the healthy presence of controversy" and which ultimately "keeps students moving close to discovery" (Hart, 1983, p. 94).

Occasionally, however, the materials or methods in specific courses are opposed by parents, local special interest groups, or even national organizations whose philosophies run counter to the course content in question. When such conflict occurs, educators must be prepared to respond. Teachers, administrators, and decision makers should be well informed about the current status of academic freedom, which is the judicial refuge of teachers when, in legitimately representing the broad interests of education, their instructional choices offend the community or its representative organizations.

This ERIC Digest synthesizes current attitudes on academic freedom in the public schools as defined by state statutes and federal court cases. Separate sections describe the framework in which academic freedom operates; powers and limitations of state legislatures and school officials in defining the curriculum and setting policy; rights and limitations of teachers in making curricular and course decisions; summaries of recent court decisions related to academic freedom; and issues that educational policy makers should address.

A framework for academic freedom in the public schools

An article in *Educational Leadership* (Hirsh and Kemerer, 1982) points out that although academic freedom is an ancient concept ("as the death of Socrates attests"), its most recent roots can be traced to 19th century Germany "where it implied both the teacher's freedom to teach and the student's freedom to learn" (p. 375).

At the same time in the United States, the concepts of civil and religious liberties "provided an historical matrix for the conceptualization of academic freedom." Specifically, "the First Amendment freedoms of speech and religion, due process, and the right of conscience in a free society" became the foundation for the concept of academic freedom (Hart, 1983, p. 92).

Originating in the universities, academic freedom gradually became a focus in the public schools when conflict over methods and materials arose. For several reasons, dealing with public confidence (or lack thereof), the philosophy of public education, and the maturity level of students, public school teachers do not enjoy the virtually uncontested right to academic freedom that college professors do. In fact, one scholar suggests that because of community interests and involvement as well as regionalism, academic freedom at the public school level may remain "loosely defined and sporadically pursued" (Hart, 1983, pp. 92-93). By analyzing state educational statutes and court decisions, however, it is possible to construct a framework within which teachers may exercise their rights of academic freedom.

An article in the *Journal of Law and Education offers such* a framework. It contends that a teacher may use methods, symbols (e.g., an armband), or materials (1) relevant to the subject matter being taught, (2) not in violation of valid laws, (3) compatible with current standards of decency, (4) reasonable for students' level of maturity, (5) intended for a legitimate educational purpose, and (6) unlikely to result in substantial disruption of school activities (Smalls , 1983, p. 548).

Powers and limitations of state legislatures and school officials in defining the curriculum and setting standards

The school board, representing the local community, has the primary responsibility for defining the curriculum and setting policy. States are also empowered to impose restrictions and guidelines on the curriculum, although they vary widely in the extent to which they involve themselves in shaping local curriculum policies.

Courts have generally rejected (or declined to rule on) challenges to the right of a state or school district to specify content areas which must be taught or to prohibit certain topics, provided that such restrictions are reasonable, not unduly narrow or rigid, and not in violation of guarantees in the U.S. Constitution. Every course has content and goals which are more or less specified in advance, and teachers are expected to stay generally within the curriculum guidelines.

School boards can require that teachers:

1. Follow prescribed curriculum content;
2. Present materials that "inculcate patriotic or moral values specifically affirmed by the state legislature or the school board";
3. Be prohibited from promoting their personal political, religious, or social views in the classroom.

In compliance with "due process" procedures, school boards must advise teachers *in writing* of limitations on classroom materials or methods (Zerkel and Gluckman, 1981, p. 53).

Rights and limitations of teachers in making curricular and course decisions

Academic freedom generally allows teachers to engage students in class discussions of controversial topics, invite outside speakers who represent a variety of viewpoints into the classroom, and choose methods and materials which best serve their instructional purposes. Teachers have the right to express (but not promote!) their personal opinions on controversial political and social issues. Primary constraints on these academic freedoms are that they must be exercised within the confines and relevance of the course and subject matter being taught.

Academic freedom in the public schools thus depends on a number of factors: the relevance of the issue to the subject matter of the course, the maturity of the students, the emotional tone and language used by the teacher, and the general "openness" of the classroom climate.

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As a general rule, the following actions have been held by the courts to exceed the limits of academic freedom:

- Use of profane or vulgar language in the classroom.
- Actions which disrupt the educational process or incite students to do so. Courts have consistently ruled that there is no legitimate excuse for such actions.
- Deliberate defiance of clearly stated mandates and instructions regarding content, methods, and materials. Such behavior is considered insubordination, rather than a legitimate exercise of academic freedom.

Summaries of recent court decisions related to academic freedom

The following summaries describe both Supreme Court and lower court cases in which academic freedom was an issue. These cases illustrate that the academic freedom of secondary school teachers in particular "has received growing judicial approval" (Hirsh and Kemerer, 1982, p. 376).

The landmark Supreme Court decision for student rights, *Tinker v. Des Moines School District* (1969) also addressed the issue of teachers' rights. Specifically, the Court upheld the right of the Tinkers (brother and sister students) to wear armbands in protest of the Vietnam War: "In *Tinker* the Court envisioned the public high school as a place for free and open discussion of ideas among teachers and students" (Lines, 1983, p. 5). Thus, neither teachers nor students are divested of First Amendment rights when they enter the school setting.

In another case closely related to academic freedom, *Board of Education, Island Trees Free District No. 26 v. Pico* (1982), the Court ruled that the school board must go to trial to show that it had a valid purpose in withdrawing a number of books from its school libraries.

Academic freedom has also been used by the courts to prohibit dismissals of teachers who produced a high school play with drinking scenes and vulgarity and who read an autobiographical account of the funeral of a student, the content of which contained a "slang expression for an incestuous son." Moreover, the courts have protected a student teacher who proclaimed approval of the Darwinian theory. The court system also prevented an attempt on the part of school officials to prevent classroom use of *Catcher in the Rye* (Sorenson, 1980, pp. 150-151).

A word of caution and a broader perspective have been voiced by at least two educators. Hirsh and Kemerer, in their article on academic freedom in *Educational Leadership* (1982), point to the inconsistency among the 11 federal courts of appeals and, in fact, categorize specific circuits as "liberal" and "conservative." Since most academic freedom cases are decided at the district court level, the authors suggest that rulings on academic freedom "do indeed depend upon where one lives" (p. 376).

In addition, a doctoral dissertation which traces the effect of the *Tinker* decision on intellectual freedom issues a reminder that "about a quarter of the cases considered show very little inclination on the part of the courts to protect either speech or individual rights" (Sorenson, 1980, p. 170).

Issues concerning academic freedom that should be addressed by educational policy makers

Academic freedom usually becomes an issue when community members or national organizations object to methods and materials used by teachers and demand elimination of controversial materials or dismissal of the teacher in question.

Policy makers and decision makers at all educational levels thus have the obligation to:

- Avoid litigation and the setting of policy by the courts by developing policies "that reflect the professional prerogatives of teachers, the interests of students, and the traditional right of school boards and administrators to set curriculum standards..." (Hirsh and Kemerer, 1982, p. 377).
- Devote more attention to developing legally sound school curriculum policies, with the knowledge that courts are "reluctant to legitimize punitive action against teachers" in the absence of such policies (Hirsh and Kemerer, 1982, p. 376).
- Follow prescribed procedures for due process when a faculty member is accused of going beyond the limits of academic freedom.
- Apprise themselves of current political forces which will ultimately give rise to diminishing financial support for questionable programs: "The threat to limit or refuse funding for schools unless the subjects taught and perspectives taken conform to the dominant view of those in power is real....In the current fiscal climate the connection of academic freedom to the purse strings becomes even more apparent" (Hart, 1983, p. 95).

The concept of academic freedom forms the foundation for democratic education and, by implication, for a democratic society. Challenges to the educational system, in the form of repressing the free exchange of ideas, must be met and a commitment to academic freedom in the public school must be sustained. In short, "the issue of academic freedom affects more than the school. It affects how how we will choose to view ideas and opinions in the future" (Hart, 1983, p. 98).

RESOURCES

Following is a bibliography of resources, including references in this Digest. Those entries followed by an ED number are available in the ERIC system and are in microfiche or paper copy from the ERIC Document Reproduction Service (EDRS). For price information write EDRS, P.O. Box 190, Arlington, VA 22210.

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